IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10100 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANGESHWARPRASAD B SINGH

Versus

UNION OF INDIA

Appearance:

MR GIRISH PATEL for MR PH PATHAK for Petitioners

MR MUKESH R SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE D.H.WAGHELA

Date of decision: 20/01/2000

ORAL JUDGEMENT (Per B.C.Patel, J.)

Three petitioners have filed this petition against the order passed by the Central Administrative Tribunal, Ahmedabad Bench (hereinafter referred to as the Tribunal) on 15.12.1999 in O.A. No.583 of 1997. The case of the petitioners as set out in the application before the Tribunal is that applicant No.1 joined the services of respondent No.4 somewhere in the month of March, 1983 and worked for about a month. It is his case that thereafter he was re-employed in the months of July and August, 1988. However, due to his ill-health, he could not render services. He was declared fit from 1.1.1991 onwards and thereafter, it is his case that, he continuously worked with the respondent. Applicant No.2 joined services for the first time on or about 1.12.1983 and he continued to work for a period of one year. From 1.12.1984 to 1.1.1985, he was under medical treatment and on being declared fit, he continued to work from 15.2.1985 to 31.5.1985. Again from 1.6.1985 to August 1988, this applicant was not keeping good health. He was taken on duty somewhere in the month of September, 1988 and he is working thereafter with the respondent Department. So far as applicant No.3 - original applicant No.5 before the Tribunal- is concerned, he was employed for the first time in the year 1987. It appears that thereafter he started working with effect from 1.5.1991 and, since then, he is working continuously and is presently posted with the respondent Department. It was contended before the Tribunal that, in view of the Apex Court's judgment in the case of DAILY R.C. LABOUR P&T DEPARTMENT v. UNION OF INDIA reported in AIR 1987 SC 2342, the benefits ought to have been granted to the applicants. On the facts as stated above, the Tribunal was moved and, on 1.10.1997, the Tribunal passed an order as under:

> " Heard Mr.Pathak. Issue Notice. As an interim measure, respondents are restrained from terminating the services of the applicants if they are actually engaged till 30.9.97 till the next date. Direct Service permitted to both the Respondents. Adjourned to 13.10.97."

2. The Tribunal in para 7 of its order dated 15.12.1999 has pointed out that at the request of the learned advocate appearing for the applicants, the matter was adjourned from time to time; the learned advocate appearing for the respondents insisted that the matter should be heard immediately or the interim relief granted earlier by the Tribunal without hearing should be vacated and the hearing of the O.A. should be postponed. On behalf of the respondents it was pointed out that the

interim relief granted against the respondents was creating problems for the Department; that even though no work was available for the applicants, they had to retain them in service and were required to pay salary. It was pointed out that the High Court had directed to give priority to this matter. From the order of the Tribunal it appears that the applicants, after obtaining stay order, were not cooperating in the hearing of the matter. The Tribunal has observed in paragraph 8 as under:

> "It is a settled position that once a party obtains the interim relief and the same is operating against other party, he cannot be heard to say that he is not prepared to argue the matter and the matter should be adjourned sine die."

Reading the entire order, it appears that there was insistence on the part of the applicants to adjourn the matter as in some other matter the High Court issued directions to adjourn the matters, forgetting the fact that, in the instant case, the High Court by a speaking order issued directions to the Tribunal to decide the matter at the earliest. Under the circumstances, the Tribunal was required to dispose of the matter. At this juncture, we will note that the Union of India preferred Special Civil Application No.6851 of 1998 before this Court wherein the present applicants were respondents in a case arising out of the order passed in the present application. The Division Bench of this Court, after hearing the learned counsel for the parties, by a detailed order disposed of the matter. In paragraph 13, the Division Bench issued directions which read as under:

> "CAT will give due priority to this case and decide the same in accordance with law without being influenced by the interim orders passed by it or the observations made by this Court in this order. Liberty to apply in case of difficulty."

3. Thus, there was a mandate issued by the Division Bench of this Court to dispose of the matter at the earliest and the Tribunal was acting in accordance with the order passed by this Court. The Tribunal by a detailed order considering the case of applicant No.4 on merits, accepted the contentions and granted applicant No.4 the temporary status. However, so far as others are concerned, the Tribunal did not find any reason to pass any order. There is a Scheme issued by the Government for granting temporary status as well as regularisation which is known as "Casual Labourers (Grant of Temporary

Status and Regularisation) Scheme, which is placed on the compilation of the case at page 22. Clause 1 of the said Scheme reads as under:

> "1. Temporary Status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have tendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks)."

4. Prima face, reading this Clause, it appears that casual labourers must be in employment on 29.11.1989 and must have been continued in employment, and, over and above, he must have tendered continuous service of at least one year. Thus, a person who had rendered services for a period of one year as on 29.11.1989 and was working on 29.11.1989 and was being employed, was entitled to get the benefits of the Scheme. We have reproduced the facts of the case as set out in the application. There is nothing in the application to indicate that any of the applicants served in such a way by which it can be said that Clause 1 is attracted. There must be satisfactory evidence on record to indicate that the workman was in employment on 29.11.1989, that he had tendered continuous service of at least one year and that during the year he had been engaged for a period of 240 days (206 days in case of offices having five days week), to attract clause (1) of the Scheme. Apart from that, Clause 10 refers to dispensing with the services of casual labourers which reads as under:

> "10. Temporary status does not debar dispensing with the services of casual labourers after following the due procedure."

5. On behalf of the respondents, it is pointed out to us that, in fact, the services were terminated before the order was passed by the Tribunal and, therefore, there is no question of continuing any interim relief or granting any benefit. It was submitted that from the contents of the application there is nothing to indicate that any of the applicants served in such a way which would attract Clause 1. In the alternative, it was submitted that even if Clause 1 is attracted, the rights of the employer to terminate the services were not taken away and by following the provisions of Section 25-F of the Industrial Disputes Act, the services were terminated. It is under this circumstance submitted that, if the petition is moved on account of termination

of service, even if it is in violation of the provisions of Section 25-F of the I.D.Act, it is for the workman to raise an industrial dispute.

6. It was pointed out to us by referring to the application itself and the relief prayed in Clause VII of the application that the relief was to the effect that the inaction of the respondents in conferring temporary status and regularisation should be declared as arbitrary, illegal and violative of Article 14 of the Constitution of India and the respondents should be directed to grant the benefits of temporary status to the applicants with 18% interest. It was further prayed that the respondents be directed to regularise the applicants after their completion of 360 days of service as per the direction of the Hon'ble Supreme Court with consequential reliefs. It was pointed out by the learned counsel for the respondents that in the application there is no whisper about the termination of service and the Tribunal was not called upon to decide whether the services were terminated in accordance with law or not, and that the Tribunal was only required to consider the question whether inaction on the part of the respondents in not regularising the applicants was illegal or not. Our attention has been drawn by the respondents by pointing out paragraph 12 at page 54 of the application that the learned advocate appearing for the applicants conceded that the main contention of the applicants was the violation of the mandatory provisions of the I.D.Act. At page 55 (paragraph 12 repetition) it is observed by the Tribunal that since no prayer for the reinstatement of the applicants was made, the question of reinstatement of the applicants except applicant No.4 did not arise. The Tribunal has distinguished the case of applicant No.4 and has conferred the benefit.

7. Mr.Shah, learned counsel appearing for the respondents has drawn our attention to certain paragraphs of the petition with a view to point out that, in fact, the petition is against the Tribunal. We reproduce the relevant paragraphs of the petition which are found at pages 2, 3 & 7 as under:

> "That this is a second case, where the order of this Hon. Court is intentionally flouted by the Tribunal. That in SCA 9232/99, in similar case, this Hon.Court was pleased to issue notice to the members of the Tribunal and is served also, yet the present application is rejected on the same ground of jurisdiction. The growing tendency to disrespect the orders of

higher court and acting in total arbitrary manner by the members of the Tribunal, are required to be dealt with seriously. This is a clear case of an offence under the provisions of the Contempt of Courts Act and arbitrary exercise of power by the members of the Tribunal."

"That the present petition arises because the Member of CAT, Ahmedabad Bench has shown no respect to the directions issued by this Hon. Court in Spl. CA No.10128/98, though the Advocate of the petitioner has requested that in view of the order by the Hon. High Court about jurqisdiction of CAT, O.A. may be adjourned, but the members have not cared about it and has disposed of this O.A."

"That in light of the above, this is a clear case of willful disobedience and showing disrespect to the order passed by this Hon.Court by the Members of the Tribunal and the petitioner is filing separate application for initiating contempt proceedings."

8. Suffice it to say that, in view of the decision of this Court in Special Civil Application No.6851 of 1998, the Tribunal was duty bound to decide the application. The court reserved liberty to apply in case of difficulty. It was open for the present petitioners to move the Court if they found that the Tribunal was not right in proceeding with the matter despite the judgment of the High Court. Having not done so, in our opinion, the averments made in the petition are without any substance, which we have reproduced hereinabove. Suffice it to say that these were unwarranted comments against the Tribunal. We find no merits and, therefore, the Special Civil Application is dismissed. Notice is discharged with no order as to costs. Interim relief stands vacated. It goes without saying that so far as termination is concerned, we have not given any finding and it would be open for the applicants to move the appropriate forum for challenging the order of termination.

(KMG Thilake)

$$$$$$$